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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,538	10/12/2001	Michael P. McLeod	7504-80241	1515

7590

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Welsh & Katz, Ltd.  
Jon P. Christensen  
22nd Floor  
120 South Riverside Plaza  
Chicago, IL 60606

EXAMINER

OROPEZA, FRANCES P

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/976,538

Applicant(s)

MCLEOD ET AL.

Examiner

Frances P. Oropeza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/12/01 (Initial Filing).
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In lines 1-2 of claims 12-14, "the acquisition unit" lacks antecedent basis.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Rohde (US 5876351). Rohde discloses a portable modular ECG monitoring device with an LCD display (20) with sufficient resolution to display waveforms. The sensed cardiac signals are inherently intrinsic beats or pace/ shock beats as these signal are all sensed when monitoring an ECG (abstract; figure 2(a); col. 4 @ 46-67; col. 5 @ 18-21 and 41-43; col. 6 @ 51-54).

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint Inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. The Applicant is advised of the obligation under 37 CFR 1.56 to point out the Inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rohde (US 5876351) in view of Skelton et al. (US 6292692). As discussed in paragraph 3 of this action, Rohde discloses the claimed invention except for the screen being a touch screen interface.

Skelton et al. teach communications interface using a touch screen for the purpose of making input selection known to a controller/ microprocessor. Absent any teachings of criticality of unexpected results, merely changing the input means from a joystick and control buttons to a touch screen interface would be an obvious design choice.

6. Claims 6-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohde (US 5876351) in view of Rockwell et al. (US 6141584). As discussed in paragraph 4 of this action, Rohde discloses the claimed invention except for: a read only memory card (claims 6 and 7), wireless communication using an infrared transceiver (claim 8) or a radio frequency transceiver (claim 9), an audio recording unit (claim 10), signal conditioning circuits (claim 11), a "baseline sway filter" (claim 12) and signal analysis and interpretation (claim 14).

As to a memory card, Rockwell et al. teaches data storage using a read only memory card for the purpose of recording the ECG and audio data in memory. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used the read only memory card in the Rohde system in order to provide a mechanism enabling the collected data to be reviewed and analyzed at a future time (col. 11 @ 3-16).

As to wireless communication, Rockwell et al. teach wireless communication using infrared and radio frequency communication signals for the purpose of conveying information to remote locations. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used infrared and radio frequency signals in the Rohde system in order to enable sharing of information and report generation to optimize the patient's treatment (col. 5 @ 2-17).

As to an audio unit, Rockwell et al. teach event recording using an audio unit for the purpose of documenting events associated with patient interaction and care. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used an audio unit in the Rohde system in order to provide a more comprehensive understanding of the

patient's condition and the treatment afforded the patient so the events are accurately reconstructed (col. 10 @ 1-9)

As to signal conditioning and filtering, Rockwell et al. teach signal conditioning using an amplifier, filter (read as a baseline sway filter), A /D converter for the purpose of optimizing the quality of the signal. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used signal conditioning including baseline sway filtering in the Rohde system in order to eliminate signal artifact, making the cardiac signals distinct so they can be more easily interpreted (col. 10 @ 46-49).

As to signal analysis, Rockwell et al. teach cardiac signal evaluation using signal analysis for the purpose of detecting the cardiac rhythm of the heart. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used signal analysis in the Rohde system in order to alert the user to cardiac condition, so conditions such as ventricular tachycardia requiring immediate medical attention can be identified and treated (col. 10 @ 49-51).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza, telephone number is (703) 605-4355. The Examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone number for the

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organization where this application or proceeding is assigned is (703) 872-9306 for regular communication and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist at telephone number (703) 308-0858.

Frances P. Oropeza  
Patent Examiner  
Art Unit 3762

*FO*  
*11/30/03*

*Angela D. Sykes*

ANGELA D. SYKES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700